

Appl. No.: 10/573,950  
Amdt. dated July 20, 2009  
Reply to Office action of June 1, 2009

### **REMARKS/ARGUMENTS**

This Amendment is submitted in response to the Office Action mailed June 1, 2009. As explained in further detail below, Applicants have amended independent Claim 1 for clarification and to further distinguish the cited references. Claims 16-21 have been added. In light of the amendments and subsequent remarks, Applicants respectfully request reconsideration and allowance of the claims.

In the Office Action, the Examiner rejects Claims 1 and 4-14 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Appl. Publ. No. 2004/0088040 to Mangiardi et al. The Examiner rejects Claims 1, 4, and 7-15 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Appl. Publ. No. 2002/0022877 to Mueller et al. Moreover, the Examiner rejects Claims 1, 4, 7, and 9-14 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Appl. Publ. No. 2004/0176834 to Brown et al. Finally, the Examiner rejects Claims 1 and 4-15 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Appl. Publ. No. 2002/0198593 to Gomez et al.

In Applicants' previous response, Applicants submitted a Declaration under 37 C.F.R. §1.132 in order to remove the '040 publication as prior art. However, the Examiner believes that the Declaration is insufficient to overcome the rejection because the '040 publication must disclose and not claim the claimed invention and that Claim 9 of the '040 publication claims the flanges. Moreover, the Examiner appears to have performed a new search and finds that independent Claim 1 is also anticipated by Mueller, Brown, and Gomez.

Applicants respectfully disagree with the Examiner's assessment of the Declaration given that Claim 9 of the '040 publication recites that the medical appliance includes a plurality of flanges that define apertures therethrough and clearly does not claim the recitations of Claim 1 relating to the widened head ends of the present application. In addition, the minor typographical error referred to the Examiner does not change the substance of the Declaration. Therefore, Applicants submit that the Declaration is sufficient to remove the '040 publication as prior art.

In any event, Applicants have amended independent Claim 1 for clarification and to further distinguish the cited references. Namely, Claim 1 has been amended to recite that the

concavely rounded throat sections are configured to intermesh with, and extend at least partially over, adjacent transitional sections in the initial state. Support for the amendment can be found, for example, on: page 2, lines 20-23; page 5, line 30 – page 6, line 5; and FIG. 1 of the present application. Conversely, FIG. 8 of the '040 publication shows that the flanges extend parallel to adjacent transitional sections. Moreover, FIG. 2 of Mueller clearly shows the difference between an expanded state and a non-expanded state and that the bulging ends (12) do not intermesh and extend over adjacent elements (10) in the non-expanded state. FIG. 9 of Brown also appears to illustrate the stent in an initial state wherein the large amplitude peaks do not extend over the small amplitude peaks. Furthermore, FIG. 6C, 7C, 8B, and 9B of Gomez, which show the stent in a tightly crimped state, demonstrate that the peaks or alleged widened head ends do not extend over adjacent peaks in an initial state.

In view of the remarks and amendments presented above, it is respectfully submitted that independent Claim 1 of the present application and those claims that depend therefrom are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. The Examiner is requested to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

Applicants have added independent Claim 21, which includes similar recitations as that of Claim 1, but alternatively recites that each annular segment has substantially the same amplitude measured between respective transitional sections about its circumference. For instance, FIG. 1 shows that the amplitude for each annular segment is substantially the same. At least for the reasons discussed above, none of the cited references teaches or suggests new Claim 21.

The patentability of the independent claims has been argued as set forth above and thus Applicants will not take this opportunity to argue the merits of the rejection with regard to the dependent claims. However, Applicants do not concede that the dependent claims are not independently patentable and reserve the right to argue the patentability of the dependent claims at a later date if necessary. For example, neither reference teaches or suggests deflection elements for looping thread around the outside of the support frame, as recited by Claims 4, 9, 10, 16, and 17.

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It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Trent A. Kirk', is written over a horizontal line.

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